**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | WC Docket No. 05-337 |
| High-Cost Universal Service Support | ) | |
| | ) | CC Docket No. 96-45 |
| Federal-State Joint Board on Universal Service | ) | |
| | ) | |
| | ) | |
| | ) | |

# INITIAL COMMENTS

## I. INTRODUCTION

The Indiana Utility Regulatory Commission (Indiana) respectfully requests an exception and waiver of time and/or filing requirements in order to provide these late-filed comments to address the three Notices of Proposed Rulemaking (NPRMs) released by the Federal Communications Commission (FCC) on January 29, 2008, relating to the Recommended Decision issued by Federal-State Joint Board on Universal Service (Joint Board) released November 20, 2007, in CC Docket No. 96-45. Indiana has gone through extensive internal deliberations regarding the subject of these comments and as such would like the exception to the filing deadline in order to offer these comments into the record of the proceeding.

The Notices seek comments on, among other things, the Joint Board's recommendations for comprehensive universal service reform utilizing a three-fund system; elimination of the identical support rule; and the adoption of a reverse auctions platform for the distribution of federal universal service funds.

Indiana supports the recommendations of the Joint Board as embodied in the Recommended Decision; its efforts in developing a robust record in this proceeding; and continued allocation of resources in order to fully develop and address various complex legal, policy and economic details which arise from the broad recommendations for reform. Indiana supports the FCC's tentative conclusion to eliminate the identical support rule that currently allows competitive carriers to receive federal support dollars based on the incumbent's costs. And Indiana tentatively and cautiously supports the selective deployment of reverse auctions initially as a transition tool for migrating from the current competitive eligible telecommunications carrier (CETC) scheme to the proposed "cap-ex focused" model for the Mobility fund.

As an important intermediate step, Indiana concurs with the FCC's most recent decision to implement a cap to the high-cost portion of the fund applicable to CETCs in order to stem the fund's exponential growth and stabilize disbursements until meaningful reform can be achieved.

Indiana believes it is important that ample transition time be accorded to all providers that will be affected under proposed changes to the existing rural and non-rural high-cost programs in order to allow for revision to existing business models as necessary. Our comments are supportive of the Joint Board's recommendations. We believe that one of the most important aspects of any comprehensive public policy reform, not just universal service, is thoughtful scrutiny and selective testing of the design to minimize unintended and/or dysfunctional outcomes of reform measures.

To that end, Indiana believes it is imperative for the FCC to gain a full understanding regarding these details so that it may properly assess the existing system and promulgate effective and granular rules that balance the interests of all consumers and providers to the greatest extent possible.

## II. FUNDAMENTAL HIGH COST UNIVERSAL SERVICE REFORM- THREE FUND APPROACH

The core of the Joint Board's recommendation is that three distinct funds be established to replace multiple existing mechanisms, eliminate the legacy pathologies of those existing mechanisms and to accomplish comprehensive reform: a Provider of Last Resort (POLR) fund, a Broadband fund and a Mobility fund.

**A. Reforming the ILEC High Cost Funds through Implementation of the POLR fund.**

Rural is rural. The existing regime of multiple legacy ILEC funds is grounded in obsolete assumptions about the interrelationship between the benefits of competition and the need for support of communications services in high cost areas. This is coupled with irrelevant distinctions between rural and non-rural companies. This holds true both in terms of distinctions currently employed between rural and non-rural providers and funds, and the assumptions regarding differential costs and operations in rural areas. Support to high cost rural areas should not be determined by the characteristics of the incumbent serving a particular area. This approach clearly yields a disincentive for some ILECs to serve high-cost areas and invest in advanced technologies including broadband. Further, in situations where the non-rural ILEC does serve rural exchanges, customers tend to be disenfranchised because, too often, they are not served by a rural carrier, therefore access to broadband may be limited at best. Indiana believes that time for continuing arbitrary distinctions among RLECs and non-rural LECs is past. Customers should not continue to bear those burdens.

Costs associated with serving rural areas are predictable and while it is appropriate to take into account economies of scale, providers should not be penalized because they serve non-rural areas. Before any reform can move forward under this or other mechanisms, pressing and long-deferred legal issues must be addressed and uncertainties resolved, particularly in regard to the non-rural mechanism and the FCC's actions taken in the *Qwest* decisions[1]. To date, the FCC has not yet publicly addressed the Court's directives under that remand proceeding, nor has it addressed or referred the second remand back to the Joint Board for further consideration and the opportunity to build an additional record in light of recent Joint Board activities. Without further action from the FCC in regard to the non-rural

[1] *See,* Qwest 1 258 F.3d. 1191 (10th Cir. 2003) and Qwest II 398 F.3d. 1222 (10th Cir. 2005).

mechanism, Indiana does not believe that meaningful reform can occur with regard to the POLR fund proposal set forth by the Joint Board.

While Indiana does not believe it is necessary to award the same flat amount of support to all carriers, or to use the same eligibility threshold for rural and non-rural providers, we do believe that the principle of competitive neutrality must be balanced against other statutory principles, most notably "specific, predictable and sufficient" support[2]. Further, Indiana believes that it is not in the public interest to continue to support additional carriers in certain areas, notably multiple CMRS providers designated as CETCs in rural exchanges. However, it is more appropriate and will better serve the public interest to examine how those funds can be directed and funneled to capital expansion projects in rural and other areas in the nation, as discussed below.

Indiana recognizes that competition is a reality today not only in our urban centers, but also increasingly in the small towns and rural communities that are the population cores of service areas across the country. Indiana believes that it is essential for provider of last resort (POLR) support be matched as closely as possible to the truly rural areas. Competitive entrants are now at work in rural service areas, as competitive entrants are vying for the relatively more profitable customers in the small towns and rural communities across America. The difference in rural areas, however, is that as the relatively more profitable customers are siphoned off by competitive entrants, incumbent providers serving rural areas are left with a greater percentage of marginal or unprofitable customers. Indiana believes it is time to look at rural cost and provision of service issues on a more granular basis, and to modify public policy regarding support accordingly. Delay is inappropriate; over time this need will only become more urgent. Not only are there newly-available tools and technologies to make this possible, there is ample precedent for doing so, dating back almost a decade to the work of the Rural Task Force.

---

[2] 47 U.S.C. § 254(b)

Indiana notes that under the embedded cost mechanism, federal universal service high-cost support for rural carriers is averaged across all lines served by a carrier within its study area. Thus, support on a per-line basis was the same throughout a study area even though both the need for and the cost of serving customers in that study area likely vary dramatically. The Rural Task Force contended that this may have created uneconomic incentives for competitive entry.[3] The Rural Task Force stated in its recommendation that the current distribution method must be modified to be consistent with the Act and the principle of competitive neutrality.[4]

As part of its proposal to reform the federal universal service support mechanism for rural carriers, the Rural Task Force proposed that rural carriers be permitted to depart from study area averaging and instead, disaggregate and target per-line high-cost universal service support, including high-cost loop support, LTS, and LSS, into geographic areas below the study area level.[5]

By doing so, per-line support would not be identical throughout a study area, but would vary to reflect the cost of providing service in a particular geographic area within the study area. The Rural Task Force concluded that the disaggregation and targeting of support is necessary to eliminate the economic distortions that may result from the delivery of support on a uniform per-line basis under the current mechanism, thereby reducing the possibility for arbitrage of universal service support resulting in shortfalls or windfalls to either ILECs or CETCs.

**B. Recognition of Broadband as a Supported Service and Creation of the Broadband Fund.**

With regard to creation of the Broadband fund, Indiana believes that separately funding a broadband initiative is in the public interest at this time. Indiana further believes that explicitly

[3] Under the Commission's portability rules a competitive eligible telecommunications carrier receives the same per-line level of high-cost support for lines that it captures from an incumbent carrier, as well as for any new lines it serves in high-cost areas. *See* 47 C.F.R. § 54.307.
[4] Rural Task Force Recommendation at 33.
[5] *Id.* at 33-36. *See also Disaggregation and Targeting of Universal Service Support: Rural Task Force White Paper 6* (Sept. 2000) (visited May 2, 2001) <http://www.wutc.wa.gov/rtf> at 4-6 (*White Paper* 6).

supporting broadband also requires a change in the definition of supported services[6] under which the FCC and Joint Board set policies. In its NPRM, the FCC recognized Congress' intent for universal service to evolve because telecommunications services evolve, thereby requiring a revision in related policies.

Notwithstanding the need for a definitional change, Indiana believes it is in the public interest to pursue an explicit broadband funding mechanism and to include states in the process of disbursing funds to eligible carriers. States are in the unique position of understanding their markets and the challenges faced by their own carriers. The FCC can look to several examples of states that have successfully implemented a state broadband program.

The high points of Connect Kentucky's success are numerous, but include a common theme: creatively deploying technology through community-based partnerships thereby improving and creating economic opportunities for individuals, communities and businesses. This model and vision for policy development is premised on the following:

- Focus on demand stimulation to create a business case for opportunities in un- and under-served areas that would not otherwise be available under formulaic models,
- Address issues including a less than 100% penetration rate of computers which necessarily limit broadband uptake,
- Take action on a county-by-county (or equivalent local jurisdiction) basis through the technological equivalent of a public/private partnership. An example of this is demonstrated through the Indiana Economic Development Corporation[7], and
- Rely on a tiered approach leveraging the private sector as contemplated in the Recommended Decision, also drawing on RUS funding and with universal service funding as a last resort.

While Connect Kentucky is a fine example of state initiative, there are other initiatives across the country which take somewhat different approaches but hold the promise of being similarly meritorious.

[6] *See*, 47 U.S.C. § 254 (c)(2)

[7] The Indiana Economic Development Corporation (IEDC) is the State of Indiana's lead economic development agency. The IEDC was officially established in February 2005 to replace the former Department of Commerce. In order to respond quickly to the needs of businesses, the IEDC operates like a business. Led by Indiana Secretary of Commerce and IEDC Chief Executive Officer Nathan Feltman, the IEDC is organized as a public private partnership governed by a twelve-member board. The IEDC Board of Directors is chaired by Governor Mitch Daniels and reflects the geographic and economic diversity of Indiana. The IEDC focuses its efforts on growing and retaining businesses in Indiana and attracting new business to the State of Indiana. The IEDC is focused exclusively on economic development and has incorporated all state entities with economic development responsibilities into its organizational structure.

The FCC has been proactive in developing policies to nurture the growth, most notably with the creation of the Federal-State Joint Conference on Advanced Services (the Joint Conference). Formed in 1999, the Joint Conference began its charge to fulfill the goals of Section 706 of the Telecommunications Act of 1996. Ensuring that advanced telecommunications services are available to all Americans is an effort to be undertaken on various levels—federal, state, local, and regional. The Joint Conference furthers that goal by facilitating the cooperative development of federal, state, and local mechanisms and policies to promote the widespread deployment of advanced services.

Connect Kentucky certainly highlights the success and best practices that can occur when states are tasked with implementing a broad policy goal such as broadband deployment. Connect Kentucky and other state level initiatives demonstrate the central importance of state leadership and state involvement in the development and execution of any such program. States are in the best position to evaluate their markets, both rural and urban, and thus can effectively target support to the areas that need it most.

Reaching the last mile has always been a challenge for any provider. As such, Indiana recommends that the FCC refresh its analysis to determine where, around the nation, areas still remain un- or under-served. States can also provide the catalyst needed to bring together diverse community resources to successfully partner with the private sector, under federal guidelines to accomplish this critical task. States are keenly aware of the cost challenges involved in reaching consumers who lie physically beyond a specific engineering footprint; however, states can also offer, through federal universal service and other sources, incentives for companies to utilize that enable them to make the business case necessary to deploy broadband facilities to those under-served regions.

An important first step in that process was taken March 19, as the Commission announced plans to expand and improve advanced services data collection efforts[8].

Utilization of GIS technology can assist the FCC and its state-level partners in understanding the complexity and challenges faced by states dealing with this issue. Building a GIS model, as several states already have done, will provide decision makers with the appropriate data sets and tools necessary to set practical objectives for its universal service broadband policy. After a geographic model is developed, cost models can then be utilized to determine the areas which can be served through extensions in addition to conditioning of existing networks and infrastructure or other incremental investments, as opposed to those where it is preferable and cost-effective to construct a new network.

The selection of broadband providers for un- and under-served areas could appropriately occur in a technology-neutral, reverse auction framework, with the low-cost provider (wireline, cable, fixed/ mobile wireless, or another validated technology) being identified for build-out purposes. Discussion of reverse auctions has been primarily focused on provider selection in the legacy arena of providers in high cost – rural and non-rural alike – areas. Indiana believes that reverse auctions could be highly effective in maximizing the impact of capex broadband funding.

**C. Elimination of the Identical Support Rule**

*1. The Identical Support Rule Creates Economic Distortions.*

Indiana vigorously supports the FCC's tentative conclusion to eliminate the identical support rule. Under the current rule, CETCs receive the same per-line support that incumbent local exchange carriers receive. The rule arose from several recommendations by the Joint Board and the FCC's adoption of the competitive neutrality principle, which stated:

[8] See, Statement of Chairman Kevin Martin. Docket No. WC 07-38 and GN 07-45.

> COMPETITIVE NEUTRALITY- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another[9].

In 1996, the Joint Board released its recommendations to the FCC wherein they advised the FCC that it would be likely that competitors would indeed compete for consumers and also universal service dollars. Rather than address the implications of that finding in accordance with the principles of competition, a policy was implemented which rewards all qualified parties – the incumbent and the CETCs alike- based on the cost structure of the ILECs. In response to subsequent recommended decisions to curb CETC funding growth by seeking to limit support to one line per household, the FCC determined in its First Report and Order[10], that it was appropriate to provide portable per-line support to CETCs based on the ILECs costs.

The identical support rule has in fact created economic distortions in the market because (1) in many instances, particularly where CETCs entered markets based on a competitive market model, resulting universal service payments, while legal, result in excess profits generated by subsidies rather than market forces and (2) in many instances, CETCs are receiving more federal universal service support than their paired ILECs[11].

In reality, the equal support rule is not in fact neutral at all. As it stands, the rule does not account for the unique characteristics of a carrier's own costs for serving a particular market. In instances where a competitive carrier can achieve economies of scale or has specific network architecture in place which allows for more efficient carriage of traffic, basing support on a higher ILEC cost unfairly advantages the competitive carrier with, in many cases, minimal accountability. CETCs

[9] *See*, First Report and Order, FCC 97-157. FCC Docket No. 96-45, Released May 8, 1997 at para. 47.
[10] *See*, First Report and Order, FCC 97-157. FCC Docket No. 96-45, Released May 8, 1997.
[11] *See*, Universal Service Monitoring Report dated December 2007. In 2007, Mississippi CETCs received approximately $144.9M in federal high-cost support while incumbents received approximately $136.2M. In 2007, Puerto Rico CETCs received approximately $127.5M in federal high-cost support while incumbents received approximately $58M.

receive more funding despite being subject to fewer and less costly obligations (perhaps most notably, POLR obligations) than the ILECs with which they are paired.

Finally, it is time to end the practice of providing funding to more than a dozen providers in an area where support is theoretically being provided based on the high cost of providing service; this amounts to "subsidized competition".

*2. Implementation of the Mobility Fund and Use of Reverse Auctions*

Once the identical support rule is eliminated, the question is how to effect a transition to the proposed Mobility Fund as quickly as feasible, without damaging those whose business plans are tied to the current legacy arrangement.[12] Indiana tentatively supports the use of reverse auctions for universal voice service(s) both (1) for phasing out the current CETC scheme to the proposed "capex" model for the Mobility fund, and (2) as a means of allocating resources immediately, as the Mobility fund grows each year. Indiana believes, however, that additional cost data is necessary before any type of auction process can be appropriately designed and implemented.

In August 2006, the Joint Board sought comments on the merits of using auctions to determine high-cost support[13]. In this proceeding, Verizon, Alltel and CTIA put forth extensive and detailed proposals for the use of reverse auctions.

Verizon proposed implementing a competitive bidding scenario, initially on a limited basis[14]. The proposal focused on a single winner scenario, with auctions first being utilized in areas in which multiple wireless ETCs currently receive support. Once these auctions were completed, a separate set of auctions could be held in areas where there is at least one wireline CETC. Verizon's proposal also highlighted a wire center-level auction[15].

[12] *See*, Recommended Decision para. 27.
[13] *See Federal State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, WC Docket No. 05-337, Public Notice, 22 FCC Rcd 2545 (Wireline Comp. Bur. 2007).
[14] *See* Letter from Kathleen Grillo, VP Federal Regulatory, Verizon to Deborah Taylor Tate, Federal Chair and Ray Baum, State Chair, Federal-State Joint Board on Universals Service, WC Docket No. 05-337, CC Docket No. 96-45, Appendix (Modernizing Universal Service: A Design for Competitive Bidding), (dated February 9, 2007)(Verizon Letter).
[15] *See id.* at 5-6.

CTIA proposed an auction structure that envisioned a "winner takes more" approach, with wireline and wireless carriers competing or bidding against one another in the same auction[16]. According to CTIA's proposal, the winning bidder would receive the level of support for which it bid, and other bidders would receive a lesser amount of support.

In February 2007, Alltel submitted a proposal for an auctions pilot program for additional broadband deployment in un-served areas. In its plan, Alltel notes that they do not contemplate a single auction winner, as Verizon posited, but rather multiple support winners.

Indiana acknowledges the general appeal of a reverse auctions system, which on the surface is elegant in its simplicity and in the clean way of determining recipients of funding. Thus, reverse auctions appear to be less cumbersome than utilization of cost models. However, Indiana believes it is necessary to have cost data available, in order to determine the appropriate geographic area in which to hold an auction.

There are certain geographic considerations that Indiana urges the FCC to consider. Initially, any reverse auction should be conducted on a wire center level. Under the current support mechanisms, CETCs are required to identify specific wire centers for which they seek and receive ETC designations from states. Under the non-rural funding mechanism, carrier's support is calculated at a wire center level. For rural carriers, Indiana acknowledges that this is not the situation.

Indiana believes that it would be advantageous to utilize a smaller geographic unit for auction implementation, whether for voice or other services such as broadband and/or mobility, to enable the FCC to address any issues that may arise. To this end, Indiana believes that should the FCC decide to

[16] *See 2006 Joint Board Public Notice*, Reply Comments of CTIA—The Wireless Association®, WC Docket No. 05-337, CC Docket No. 96-45, Appendix (Controlling Universal Service Funding and Promoting Competition Through Reverse Auctions by James Stegeman, Dr. Steve Parsons, Robert Frieden and Mike Wilson)(filed November 8, 2006)(CTIA Reply Comments).

move forward with the reverse auctions, it would be a worthwhile exercise to engage in a pilot program, as Alltel suggested in their proposal[17].

Additionally, Indiana urges the FCC to coordinate with or delegate additional authority to state commissions regarding a possible redefinition of carriers' service area due to provisions contained in Section 214(e)(5)[18]. Other possibilities have been raised by the FCC involving metropolitan statistical areas or rural statistical areas (MSAs or RSAs)[19]. While the use of MSAs and RSAs is competitively and technologically neutral, Indiana concurs with CTIA that a larger geographic area, such as MSAs and/or RSAs may lead to coverage problems for potential bidders[20].

Whether reasonable or even defensible, the reality is that many CMRS companies have built their respective business plans at least in part on the expectation that they will receive federal and, in many cases, state universal service funding based on the legacy transfer system. Government policy has created that expectation. Therefore, it is logical that a transition to a capex system or fund, rather than a "flash-cut" be part of any future solution.

We concur with the FCC that in any reverse auction, a bidder must first hold an ETC designation covering the relevant geographic area prior to participating in that auction to determine support for that area. We further agree that continuing to fund multiple "winners" over time, even at lower support amounts, does nothing to further universal service policies other than perpetuate an already-strained funding system, and does little to address build-out in un- and under-served areas. Supporting capital expansion projects is an appropriate use of federal universal service dollars for competitive carriers. Indiana believes it represents the highest and best use of Mobility funds.

Indiana believes that a proposed two-step process can be implemented using various aspects of several proposals relative to reverse auctions. Indiana believes that simultaneously conducting two sets

---

[17] See, Letter from Gene DeJordy, VP Regulatory Affairs, Alltel to Deborah Tate, Federal Chair and Ray Baum, State Chair, Federal-State Joint Board on Universal Service (dated February 16, 2007).
[18] 47 U.S.C. § 214(e) (5). See also, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-180, paras. 172-74 (Federal-State Joint Board 1996) (*1996 Recommended Decision*).
[19] *See*, Notice of Proposed Rulemaking, FCC 08-5, CC Docket No. 96-45, rel. January 29, 2008 at para.20.
[20] *See*, CTIA Reply Comments, Appendix at 18.

of reverse auctions could eliminate the need for a cost-based replacement to the equal support rule, commence phase-down of the legacy system, jump-start the Mobility fund and reduce waste and abuse of federal universal service dollars. In addition to allowing existing recipients time to modify their business plans address the risk inherent in a "flash cut" solution, this approach eliminates the potentially perverse circumstance of advantaging one entrant over all others which could be the outcome of a "winner takes all" model. Ironically, in a market with multiple wireless entrants, some or most of what may have entered initially based on a competitive (unsubsidized) model, the "winner takes all" approach could prove anticompetitive

## III. TRANSITION ISSUES

Indiana underscores the importance of giving great care and attention to the transitions from existing mechanisms to the proposed new Funds. In the Recommended Decision, appropriate attention is given to the importance of effecting the transition over time, to give providers the time required to adjust their business models to account for shifts in emphasis, process and policy.

Indiana urges the FCC to consider all aspects of the transition details related to implementation of a multi-fund mechanism, despite the fact that a three-fund system proposed in the Recommended Decision represents a dramatic simplification of what has become a balkanized system. A phase-in period is of particular importance, especially if the FCC should combine both the rural and non-rural mechanisms into one single high-cost funding source, applicable to all ILECs.

In this regard, Indiana urges that the FCC adopt a transition period consistent with prior FCC decisions regarding highly complex issues such as intercarrier compensation, access charge and universal service reform[21]. Carriers will need the time to adjust their internal administrative processes and systems as well as anticipate the overall fiscal impact to their business plans.

[21] See generally, the MAG and CALLS orders respectively

## IV. CONCLUSION

Indiana recognizes the diligence and time-consuming work that has gone into this process to date, and commends the Joint Board for its initiative in undertaking and proposing a comprehensive solution. To that end, Indiana respectfully offers these comments to support the record in this docket.

We are however, concerned that the current growth rate of the fund will jeopardize the future viability of all universal service programs, thereby affecting the future of affordable and ubiquitous access to telecommunications services for consumers. Comprehensive action is urgently needed. We believe that affordable access to communications services is the foundation of continued economic development in this nation and we welcome the opportunity to continue to provide input to the process going forward.

Respectfully submitted this 7th day of May, 2008.

Larry S. Landis, Commissioner
Indiana Utility Regulatory Commission